

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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RAYMOND J. SMITH,

Plaintiff,

v.

MATT MESKAN,

Defendant.  
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ORDER

18-cv-679-bbc

Pro se plaintiff Raymond Smith, who is incarcerated in the Jackson Correctional Institution, is proceeding on an Eighth Amendment claim that defendant Matt Meskan gave plaintiff the wrong prescription medications at the Monroe County jail on December 30, 2016. Defendant has not yet answered the complaint, but plaintiff has filed an amended complaint that is ready for screening under 28 U.S.C. § 1915A. Dkt. #8.

Plaintiff's amended complaint repeats the allegations made in the original complaint and adds a claim for state law negligence against defendant Meskan. Under Wisconsin law, a claim for negligence "requires the following four elements: (1) a breach of (2) a duty owed (3) that results in (4) an injury or injuries, or damages." Paul v. Skemp, 2001 WI 42, ¶ 17, 242 Wis. 2d 507, 625 N.W.2d 860. For the same reasons explained in the previous screening order, plaintiff's allegations are sufficient to state a claim for negligence against defendant Meskan under state law. Therefore, I will amend the screening order, dkt. #6, to allow plaintiff to proceed on a state law negligence claim as well as a claim under the Eighth

Amendment.

I note that plaintiff does not allege that he complied with the notice of claim requirements in Wis. Stat. § 893.80(1)(a), which apply to suits against county employees. However, I will not address that issue now because Wisconsin courts have treated a failure to comply with § 893.80 as an affirmative defense. Thorp v. Town of Lebanon, 2000 WI 60, ¶ 24, 235 Wis. 2d 610, 626, 612 N.W.2d 59, 69.

#### ORDER

IT IS ORDERED that the screening order in this case, dkt. #6, is AMENDED to state that plaintiff Raymond Smith is GRANTED leave to proceed on claims that defendant Matt Meskan gave plaintiff medications that he had not been prescribed, in violation of the Eighth Amendment and state negligence law.

Entered this 25th day of October, 2018.

BY THE COURT:

/s/

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BARBARA B. CRABB  
District Judge